

REMARKS

Reconsideration of the instant application in view of the above amendments and the following remarks is respectfully requested. Claims 1-16 are currently pending and under consideration. By the present amendment, claim 1 is canceled, claims 5, 6, and 7 are redrafted into independent format, and claims 8-14 are amended to maintain proper dependency in light of the cancellation of claim 1. In addition, claims 2-4 are amended to recite the feature that bone marrow cells or mesenchymal stem cells (MSCs) and neurospheres are transplanted into a penumbral central nervous tissue. Support for these amendments may be found throughout the specification and claims as originally filed, and the amendments do not constitute addition of new matter. It should be noted that the above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related application.

Withdrawal of Rejection Under 35 U.S.C. §103(a)

Applicants thank the Examiner for reconsidering and withdrawing the previous rejection under 35 U.S.C. § 103(a) in light of the amendment filed July 26, 2006.

Rejection Under 35 U.S.C. §102(b)

Claims 1-4 and 8-10 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Azizi *et al.* Specifically, the Examiner asserts that Azizi *et al.* describes transplantation of human marrow stromal cells and suggests their use in the treatment of various diseases. The Examiner concedes that Azizi *et al.* only describes transplantation into healthy brains and fails to teach that the transplanted cells differentiate into parenchymal cells in the brain. However, the Examiner maintains the position that Azizi *et al.* indicates that the transplanted cells become differentiated once they are transplanted given that they are said to behave like endogenous CNS cell. Claims 5-7 and 11-16 are not rejected on this basis, indicating that the Examiner concedes that the methods recited in these claims are novel over Azizi *et al.*

Applicants respectfully traverse these bases of rejection and submit that Azizi *et al.* fails to anticipate the claimed invention, since it fails to teach each element of the claimed invention and also fails to enable the skilled artisan to make and use the claimed invention. However, without acquiescence to this basis of rejection and solely to expedite prosecution of the instant application, rejected claim 1 has been canceled, and claims 5-7, which the Examiner indicates are novel over Azizi *et al.*, have been amended to independent format, thereby obviating this basis of rejection with respect to claims 1 and 5-7.

In light of the cancellation of claim 1, claims 11-14 have been amended to depend from claim 5. Since claim 5 is novel over Azizi *et al.*, claims 11-14, which now include all the limitations of claim 5, are necessarily also novel over Azizi *et al.*

In addition, independent claims 2-4 have been amended to recite the limitation of claim 5, namely that the bone marrow cells or composite of mesenchymal stem cells and neurospheres are transplanted into a penumbral central nervous tissue. Support for this amendment is found throughout the specification and claims as filed, including, *e.g.*, on page 6, lines 27-28, which describes cells being transplanted into the penumbral tissue adjacent to a lesion. As acknowledged by the Examiner with respect to claim 5, Azizi *et al.* fails to anticipate methods of the present invention involving transplantation of cells into a penumbral central nervous tissue. Accordingly, Azizi *et al.* fails to anticipate amended claims 2-4, and claims 15 and 16, which depend from claim 3.

Applicants respectfully request that the Examiner reconsider and withdraw this basis of rejection in light of the above amendment and remarks.

Double Patenting Rejection

Claims 1-16 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 11/027,881.

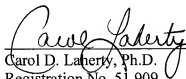
Claims 1-16 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 11/431,290.

Without acquiescence to these bases of rejection, Applicants submit with this amendment a terminal disclaimer with respect to both Application No. 11/027,881 and Application No. 11/431,290, thereby overcoming these bases of rejection. Accordingly, Applicants respectfully request that these bases of rejection are withdrawn.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicants respectfully submit that all of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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Terminal Disclaimer

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